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JAN 11 2002 KN

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY J DEPUTY

The Honorable Barbara Jacobs Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MYLES LAWRENCE HILLS,

)
Plaintiff,) No C01-0159
)

v.

SEATTLE POLICE DEPARTMENT, CITY OF
SEATTLE, NORMAN STAMPER, JAMES KIM,
PATRICK CHANG, and COUNTY OF KING,
JOHN AND JANE DOES 1-10,

)
Defendants,)
)

) KING COUNTY'S BRIEFING IN
) SUPPORT OF BIFURCATION OF
) CLAIMS

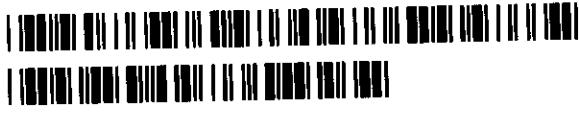
I. RELIEF REQUESTED

This Court has asked the parties to provide briefing on whether plaintiff's claims against the two arresting Seattle police officers should be bifurcated for trial purposes from his claims against the City of Seattle and King County. King County believes that its interest in this issue will be nonexistent once the Court rules on its summary judgment motion, the County believes plaintiff's claims against it cannot survive that motion.

Assuming for the sake of argument that any of plaintiff's claims against King County were to survive the County's summary judgment motion, and after reflecting upon the Court's inquiry, King County asks that this Court bifurcate plaintiff's claims in this manner.

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SJ



CV 01-00159 #00000048

RT

ORIGINAL

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Tort Section
900 King County Administration Bldg
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-8819

II. RELEVANT FACTS

In his complaint, plaintiff alleges that on or about February 5, 1998, he was arrested by Seattle Police officers James Kim and Patrick Chang, who used “physical force which was clearly excessive . . . with the intent to inflict unnecessary harm upon [him].” Ex. 1-A at paragraph 5 1¹ In his deposition, he explained that one of the two arresting police officers put him in handcuffs that were too tight Ex 1-B at 65-66. According to plaintiff, he was thereafter placed in a cell at a Seattle Police precinct and pepper-sprayed, knocked to the ground, smashed in his head, kicked in his back and stomach, and then hog-tied, all by unknown Seattle police officers. Ex. 1-B at 63-71. This attack allegedly caused him a big lump on his head and “abrasions all over . . . [his] body.”

Ex 1-B at 71

11 Plaintiff was thereafter taken to the King County jail in downtown Seattle Ex 1-B at 138-
12 39 In his complaint, plaintiff claims that at the jail, “[w]hile still handcuffed, . . King County Jail
13 officers, whose names are not known to plaintiff . . used unnecessary force and excessive force in
14 handling claimant . . with the intent to inflict unnecessary harm upon the plaintiff.” Ex. 1-A at
15 paragraph 5.2

16 In his deposition, plaintiff explained that, specifically, the transporting Seattle Police officer,
17 whose name he does not know, “slammed” him against the jail’s booking counter. Ex. 1-B at 138-
18 39 Then, that same police officer kicked his legs out from underneath him and grabbed him by the
19 middle of his handcuffs and pulled on them in an upward fashion. Ex. 1-B at 139-42 Then, a King
20 County jail corrections officer, whose name he also does not know, grabbed him by the arm in a

¹ All exhibits referenced herein are attached to King County's motion for summary judgment. To avoid providing this Court with reams of paper, they are not also attached hereto.

1 way that pinched his skin Ex. 1-B at 140-44. By those holds, the Seattle Police officer and the
2 corrections officer then pulled him down a corridor and into a holding cell while his feet dragged
3 behind him Ex. 1-B at 143. Once in the jail cell, according to plaintiff, he was dropped to the
4 ground, leaned on by a knee,² pepper-sprayed, had his mouth covered with a towel, hog-tied, kicked
5 in his back and legs, and hit in the head. Ex. 1-B at 145-48. Plaintiff believes his attackers in the
6 jail cell were all King County jail corrections officers, although he cannot identify any of them by
7 name either. Ex 1-B at 145-48

8 Despite allegedly being the recipient of the above-described attack in the jail, plaintiff has
9 explained that he *cannot* say that he suffered additional injury once he arrived at the jail Ex. 1-B at
10 149 If he *did* suffer additional injury, plaintiff has stated, it was only to his *hands*, which had
11 already been injured before he got to the jail by handcuffs that were too tight, placed on him by
12 Seattle Police officers Plaintiff has explained

13 Q And is it your testimony that you sustained any additional injuries
14 after you arrived at the King County Jail?

15 A That's a possibility.

16 Q You don't know?

17 A I really don't know. My hands were so swollen when I got there, I
18 don't know if that caused any additional injuries to my hands or not.

19 Ex. 1-B at 149. Plaintiff has described only two events in the jail that could have
20 even *possibly* caused additional injury to his hands One was the unknown Seattle Police
21 officer's alleged action of pulling up on his cuffs in the booking area Ex 1-B at 139-42
22 The other was the King County corrections officers' reported continued use of handcuffs

² According to plaintiff, while a knee was placed on his back, the Seattle Police's handcuffs were taken off of him and replaced with jail handcuffs Ex 1-B at 152

1 on him for some unknown length of time before he was transported out of the booking
2 area to another floor of the jail. Ex. 1-B at 152, 158-59.

3 Plaintiff has explained that none of the acts of any of the King County's jail's corrections
4 officers of which he complains was accidental or simply negligent; all of those acts were
5 "completely intentional" acts intended to harm him. Ex 1-B at 147.

6 Plaintiff has also made clear that he does not believe that the King County jail had or has
7 any custom, policy or practice that led to the unknown corrections officers assaulting him Ex 1-B
8 at 155-56. From his many bookings in the jail, he is of the belief that the jail's policies, procedures
9 and customs do not support such intentional wrongful acts by its officers. Ex. 1-B at 155-56 In
10 fact, the King County jail has never had a policy, practice or custom, in its training of corrections
11 officers or otherwise, that would support an officer's use of excessive force on an inmate. Ex 2

12 III. ISSUE

13 Would not trial bifurcation of plaintiff's claims against the two arresting Seattle police
14 officers from his claims against the City of Seattle and King County promote the economic and
15 expeditious resolution of all of plaintiff's claims?

16 IV. EVIDENCE RELIED UPON

17 The evidence upon which this motion is based includes each of the following exhibits,
18 attached to King County's previously filed and pending motion for summary judgment

19 Exhibit 1 Declaration of Timothy Michael Blood in Support of King County's Motion for
Summary Judgment;

20 Exhibit 1-A Plaintiff's Complaint;

21 Exhibit 1-B Verbatim Report of (Excerpts) of Plaintiff's Deposition;

Exhibit 2: Declaration of Craig Nelson.

V. AUTHORITY

**BIFURCATION WOULD PROMOTE THE EXPEDITIOUS AND ECONOMIC
RESOLUTION OF ALL OF PLAINTIFF'S CLAIMS IN THIS LAWSUIT**

The Civil Rules authorize a court to bifurcate trials.

in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy . . . always preserving inviolate the right of trial by jury.

Fed. R. Civ. Proc. 42(b) The decision to bifurcate is within the discretion of the trial court.

See, e.g., McLaughlin v. State Farm Mut. Auto Ins. Co., 30 F.3d 861, 870 (7th Cir. 1994), cert. denied, 513 U.S. 1149 (1995), *Yung v. Raymark Industries, LTD.*, 789 F.2d 397, 400 (6th Cir. 1986). The Advisory Committee's notes to Rule 42(b) note that "[W]hile separation of issues for trial is not to be routinely ordered, it is important that it be encouraged where experience has demonstrated its worth."

In determining whether bifurcation is appropriate, a district court must balance several factors, including (1) promoting convenience, (2) expediting the proceedings, and (3) avoiding unfair prejudice to a party. Daniels v. Loizzo, 178 F.R.D. 46, 47 (S.D.N.Y. 1998); Ismail v. Cohen, 706 F.Supp. 243, 251 (S.D.N.Y. 1989), *aff'd*, 899 F.2d 183 (2nd Cir. 1990). *See also*, Berry v. Deloney, 28 F.3d 604, 610 (7th Cir. 1994); In re Beverly Hills Fire Litigation, 695 F.2d 207, 216 (6th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983); Beeck v. Aquaslide, 562 F.2d 537, 542 (8th Cir. 1977). Only *one* of the three criteria need be satisfied for a court to order a separate trial. Daniels, 178 F.R.D. at 47; Ismail, 706 F.Supp. at 251; *see also*, Berry, 28 F.3d at 610.

KING COUNTY'S BRIEFING IN SUPPORT OF BIFURCATION OF CLAIMS -- 5

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Tort Section
900 King County Administration Bldg
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-8819

1 Based upon these criteria, bifurcation of claims against an individual officer from those
 2 against the officer's municipality has become routine in § 1983 "excessive force" cases. See,
 3 e.g., Treecce v. Hochstetler, 2000 WL 630972, at 4-5 (7th Cir. 2000); Daniels, 178 F.R.D. at 47
 4 (S.D.N.Y. 1998); Watkins v. Schriver, 52 F.3d 769, 770 (8th Cir. 1995), Myatt v. City of
 5 Chicago, 816 F.Supp. 1259, 1263-64 (N.D. Ill. 1992), Ricciuti v. New York City Transit
 6 Authority, 796 F.Supp. 84 (S.D.N.Y. 1992), Marryshow v. Town of Bladenburg, 139 F.R.D.
 7 318, 319-20 (D. Md. 1991) *aff'd*, 986 F.2d 689 (4th Cir. 1993); Ismail, 706 F.Supp. at 243.
 8 Specifically, several Ninth Circuit cases have approved of bifurcation to satisfy the purposes of
 9 Rule 42(b) in this context. See, e.g., Byrd v. Guess, 137 F.3d 1126, 1129-30, (9th Cir. 1998),
 10 Quintanilla v. City of Downey, 84 F.3d 353, 354-55 (9th Cir. 1996); Larez v. City of Los
 11 Angeles, 946 F.2d 630, 635, 640 (9th Cir. 1991), Sanchez v. City of Riverside, 596 F.Supp. 193,
 12 194 (C.D. Cal. 1984). Clearly, bifurcation in the instant situation "has demonstrated its worth"
 13 to many courts before.

14 A plaintiff is only entitled to *one* award of damages for a given constitutional violation.
 15 Sanchez v. City of Riverside, 596 F.Supp. 193, 195-96 (C.D. Cal. 1984), *see also* Marryshow v.
 16 Town of Bladenburg, 139 F.R.D. 318, 320 (D. Md. 1991) *aff'd*, 986 F.2d 689 (4th Cir. 1993).
 17 Obviously, if a plaintiff proves he or she suffered a constitutional violation at the hands of an
 18 individually named police officer who was acting in the scope and course of the governmental
 19 entity's business, and the governmental entity has agreed that it is liable for any judgment that
 20 flows therefrom, the governmental entity is liable for the judgment without the need for any trial
 21 of the governmental entity on the claimed violation. Sanchez, 596 F.Supp. at 195 ("Since all
 22 compensable damages resulting from the constitutional wrong to plaintiff Sanchez have been

1 Accordingly, bifurcation of plaintiff's claims against the two Seattle Police officers from the
2 remainder of his claims will likely result in a more expeditious and economic resolution of all of
3 plaintiff's claims. In this action, bifurcation is warranted.

4 **VI. CONCLUSION**

5 Based upon all of the above, this Court should bifurcate plaintiff's claims against the two
6 arresting Seattle police officers for trial purposes from his claims against the City of Seattle and
7 King County. A trial of plaintiff's claims against the two officers will likely lead to the prompt and
8 economic resolution of all of plaintiff's other claims, without the need for a trial of those other
9 claims.

10
11 DATED this 10th day of January, 2002

12
13 NORM MALENG
King County Prosecuting Attorney

14 By: 
15 TIMOTHY M. BLOOD, WSBA #14004
16 Senior Deputy Prosecuting Attorney
Attorneys for Defendant King County

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3 AT SEATTLE
4 CLERK U.S. DISTRICT COURT
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6 BY DEPUTY

The Honorable Barbara Jacobs Rothstein

5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MYLES LAWRENCE HILLS,

9 Plaintiff,) No. C01-0159

10 v.)

11) CERTIFICATE OF SERVICE

12 SEATTLE POLICE DEPARTMENT, CITY OF)
13 SEATTLE, NORMAN STAMPER, JAMES)
14 KIM, PATRICK CHANG, and COUNTY OF)
15 KING, JOHN AND JANE DOES 1-10,)

16 Defendants,)

17 I declare under penalty of perjury that the foregoing is true and correct.

18 On this day I hand-delivered through Pacific Northwest Process, for delivery by January 11, 2002,
19 at 4:30 p.m., a copy of the following documents

20 King County's Briefing in Support of Bifurcation of Claims and this Certificate of
21 Service.

22 Said delivery was directed to:

23 The Honorable Barbara Jacobs Rothstein
24 Western District of Washington
25 1010 Fifth Avenue
26 705 U S Courthouse
27 Seattle, WA 98104

28 Norm Maleng, Prosecuting Attorney
29 CIVIL DIVISION
30 Tort Section
31 900 King County Administration Building
32 500 Fourth Avenue
33 Seattle, Washington 98104
34 (206) 296-8820 Fax (206) 296-8819